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3:01-CV-00671 DEAL V. SAN DIEGO TRUX
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CNTCLM.

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01 MAY 15 PM 2:26

Attorneys for Trux, Inc. d/b/a San Diego Trux,
John Lawrence, Paul McGiven and Aaron Hollins

John Lawrence DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID DEAL

Plaintiff,

vs.

SAN DIEGO TRUX, a California business, JOHN
LAWRENCE, an individual, PAUL McGINNIS,
an individual, AARON HOLLINS dba ONLINE
OUTFITTERS, and DOES 1 through 100,
inclusive,

Defendants.

TRUX, INC. d/b/a SAN DIEGO TRUX, JOHN
LAWRENCE, and PAUL McGIVEN,

Counter-Claimants,

vs.

DAVID DEAL,

Counter-Defendant.

Case No. 01 cv 0671H (NLS)

**COUNTERCLAIM OF TRUX, INC.,
JOHN LAWRENCE AND PAUL
McGIVEN AGAINST DAVID
DEAL; DEMAND FOR JURY
TRIAL**

Counter-Claimants TRUX, INC. d/b/a SAN DIEGO TRUX, JOHN LAWRENCE and PAUL McGIVEN (collectively "Counter-Claimants") allege as follows:

1. Counter-Claimant TRUX, INC. ("TRUX") is a California corporation with its principal place of business in San Diego County, California.

2. Counter-Claimant JOHN LAWRENCE ("LAWRENCE") is an individual who resides in San Diego County, California.

3. Counter-Claimant PAUL McGIVEN ("McGIVEN") is an individual who resides in San Diego County, California.

4. On information and belief, Counter-Defendant DAVID DEAL ("DEAL") is an individual who resides in Vista, San Diego County, California.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper under Rule 13 of the Federal Rules of Civil Procedure.

FIRST CAUSE OF ACTION (Declaratory Relief/Invalidation of Copyright)

6. Counter-Claimants incorporate and reallege herein by reference paragraphs 1 through 5, inclusive, as though fully set forth herein.

7. Counter-Claimants seek a declaration from the Court declaring that Counter-Defendant DEAL's alleged copyrights are invalid.

8. With regard to Counter-Defendant DEAL's alleged copyrights, Counter-Claimants seek a declaration from the Court as to the registrations alleged to be held by Counter-Defendant DEAL:

(a) That the registrations were obtained fraudulently; and/or

(b) That the registrations and purported copyrights are not entitled to copyright protection because they are not original works of authorship; and/or

(c) That a substantial portion of the material in which DEAL claims copyrights was preexisting material which DEAL used unlawfully; and/or

(d) That a substantial portion of the material in which DEAL claims copyrights was created by others; and/or

1 (e) That Counter-Claimants use, if any, of the materials in which DEAL claims
2 copyrights is a fair use or authorized use; and/or

3 (f) That DEAL cannot obtain statutory damages and/or attorney's fees under the
4 Copyright Act because he failed to comply with 17 U.S.C. § 412.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Counter-Claimants pray for judgment and relief as more specifically
7 detailed in each cause of action against Counter-Defendant DAVID DEAL as follows:

- 8 1. Counter-Defendant DEAL's alleged registered copyrights be declared invalid;
9 2. That Counter-Defendant DEAL pay to Counter-Claimants the cost of this
10 action, expenses, and reasonable attorney's fees; and
11 3. That Counter-Claimants have such other and further relief as the court may
12 deem necessary or appropriate.

13
14 Dated: May 15, 2001

Respectfully submitted by:

JAY S. KOPELOWITZ
KOPELOWITZ & ASSOCIATES

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20 Attorneys for Defendants Trux, Inc. d/b/a
21 San Diego Trux, John Lawrence and Paul
22 McGiven
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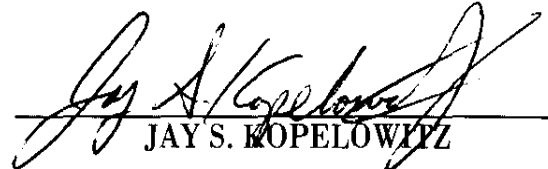
JURY DEMAND

Counter-Claimants Trux, Inc. d/b/a San Diego Trux, John Lawrence and Paul
McGiven hereby demand a trial by jury.

Dated: May 15, 2001

Respectfully submitted by:

JAY S. KOPELOWITZ
KOPELOWITZ & ASSOCIATES



JAY S. KOPELOWITZ

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Attorneys for Defendants Trux, Inc. d/b/a
San Diego Trux, John Lawrence and Paul
McGiven

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is: 101 West Broadway, Suite 1950, San Diego, CA 92101.

On May 15, 2001 I served the foregoing documents described as:

COUNTERCLAIM OF TRUX, INC., JOHN LAWRENCE AND PAUL McGIVEN AGAINST DAVID DEAL; DEMAND FOR JURY TRIAL

upon the interested parties in this action by placing

☒ copies enclosed in sealed envelopes to:

Howard E. King, Jr.
9845 Erma Road, Suite 201
San Diego, California 92131

Tel: (858) 551-1540
Fax: (858) 578-0672

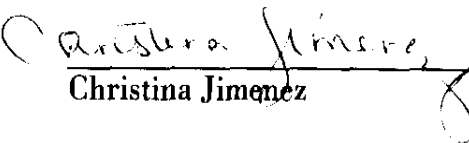
Counsel for Plaintiff and Counter-
Defendant DAVID DEAL

☒ **BY REGULAR MAIL** by depositing such envelope with postage thereon fully prepaid in the United States mail at San Diego, California.

☐ **BY FACSIMILE** by telecopier to the facsimile telephone numbers listed above.

I certify under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct.

Dated: May 15, 2001 at San Diego, California.


Christina Jimenez